

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**Serial No.: **09/911,703**

Confirmation No.: 4927

Filed: 25 July 2001

Applicant: Darrell R. ANDERSON et al.

For: Anti-CD20 Antibodies

Group Art Unit: 1644

Examiner: R. Schwadron

Mail Stop **AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF FINALITY**

Sir:

The final Office action mailed 29 December 2006 states a new ground of rejection that was not necessitated by amendment or other action by the applicant. Accordingly, applicant believes that the finality of the Office action is premature and requests that it be withdrawn.

At ¶ 12 of the Office action mailed 29 December 2006, a new rejection of claims 21, 26, 41, 42, 58, 59, 69 and 70 under 35 U.S.C. § 102(a) based on “Anderson et al. (1991)” is stated. Applicant understands that the citation is to Anderson, D.R., *et al.*, “Immunoreactivity and effector function associated with a chimeric anti-CD20 antibody,” abstract of a presentation at the Second IBC International Conference on Antibody Engineering, San Diego, 16-18 December 1991.

MPEP § 706.07(a) states that a second or subsequent action on the merits shall be final “*except* where the examiner introduces a new ground of rejection that is neither necessitated by amendment of the claims nor based on information submitted in an [IDS under § 1.97(c) (*i.e.*, an IDS after an action on the merits)]” (emphasis added). Neither condition applies to the newly introduced ground of rejection.

The Anderson reference that is the basis for the new ground of rejection was cited in this application in an IDS filed on 21 October 2003, and its consideration by the examiner was indicated on an initialed form PTO-1449 returned with the first Office action on the merits, mailed on 7 April 2005. Thus, the cited reference was not submitted by the applicant in a manner that would support making the outstanding Office action final.

The last substantive action by applicant in this application was a reply filed on 12 August 2005, responding to a non-final Office action. That reply contained amendments to the claims. However, the amended claims do not implicate the disclosure of the Anderson IBC abstract in a way that the claims prior to such amendments did not. For example, applicant amended claim 21 to recite that the claimed antibody specified by the amino acid sequences in SEQ ID NOs: 4 and 6 is “immunologically active” and to specify, respectively, “residues 23 to 128” and “residues 20 to 140” of those sequences. The added limitations would not affect the basis for the examiner’s contention that the antibody identified only by name as “C2B8” in the cited Anderson abstract meets the limitations of claim 21. These amendments do not raise any issue with respect to the Anderson IBC abstract that could not have been raised in the absence of the amendments.

Because the new ground of rejection stated in the Office action mailed 29 December 2006 was not necessitated by an amendment or other action by the applicant, applicant requests that the examiner reconsider the finality of the action and re-issue the communication as a non-final Office action stating a new period for response.

Respectfully submitted,

/David L. Fitzgerald/

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